

Before the  
Federal Communications Commission  
Washington, DC 20554

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In the Matter of	)	
	)	
Request for Waiver by	)	
	)	
Governor's School for Global Economics	)	NEC.470.12-27-99.04500060
and Technology	)	
Keysville, Virginia	)	
	)	
Federal-State Joint Board on	)	CC Docket No. 96-45
Universal Service	)	
	)	
Changes to the Board of Directors of the	)	CC Docket No. 97-21 ✓
National Exchange Carrier Association, Inc.	)	

**ORDER****Adopted: January 11, 2002****Released: January 14, 2002**

By the Accounting Policy Division, Common Carrier Bureau:

1. The Accounting Policy Division has under consideration a Waiver Request filed by the Governor's School for Global Economics and Technology (Governor's School), Keysville, Virginia.<sup>1</sup> Governor's School seeks a waiver of the Commission's rules governing discounts for services under the schools and libraries universal service support mechanism.<sup>2</sup> For the reasons set forth below, we deny Governor's School's Waiver Request.

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts for eligible telecommunications services, Internet access, and internal connections.<sup>3</sup> In order to receive discounts on eligible services, the Commission's rules require that the applicant submit to the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator) a completed FCC Form 470, in which the applicant sets forth its technological needs and the services for which it seeks discounts.<sup>3</sup> The Administrator must post the FCC Form

<sup>1</sup> Letter from Nancy R. Carwile, Governor's School for Global Economics and Technology, to Federal Communications Commission, filed July 17, 2000 (Waiver Request).

<sup>2</sup> *Id.*

<sup>3</sup> 47 C.F.R. §§ 54.502, 54.503.

<sup>4</sup> 47 C.F.R. § 54.504(b)(1), (b)(3).

470 on its website, and the applicant is required to wait 28 days before making a commitment with a selected service provider.<sup>5</sup> Once the applicant has complied with the Commission's competitive bidding requirements and entered into an agreement for eligible services, it must file an FCC Form 471 application to notify the Administrator of the services that have been ordered, the carrier with whom the applicant has entered into an agreement, and an estimate of funds needed to cover the discounts to be given for eligible services.<sup>6</sup> The Commission's rules allow the Administrator to implement an internal filing period ("filing window") for the FCC Form 471 applications that treats all schools and libraries filing within that period as if their applications were simultaneously received.<sup>7</sup> Applications that are received outside this filing window are subject to separate funding priorities under the Commission's rules.<sup>8</sup> It is to all applicants' advantage, therefore, to file their applications prior to the close of the filing window.

3. Governor's School requests a waiver of the Funding Year 3 application window, which closed on January 19, 2000 at 11:59 p.m. Eastern Standard Time.<sup>9</sup> Because the window closed on that date, in order to be in compliance with the program's competitive bidding requirements and also file an application within the filing window, it was incumbent upon applicants in Funding Year 3 to have their FCC Forms 470 posted no later than December 22, 2000, 28 days before the close of the filing window.<sup>10</sup>

4. Governor's School provides evidence that it mailed its FCC Form 470 via the U.S. postal service on December 14, 1999, through certified mail. The record reflects that SLD received the form on December 27, 1999.<sup>11</sup> SLD posted the form on December 29, 1999, two days after receiving it.<sup>12</sup> After waiting at least 28 days following the FCC Form 470 posting date, in compliance with the competitive bidding rules, Governor's School filed two related FCC Forms 471: NEC.471.02-03-00.6300002, filed on February 3, 2000, and NEC.471.03-09-00.8600012, filed on March 9, 2000.<sup>13</sup> Both FCC Forms 471 were filed past the January 19, 2000 deadline for the Funding Year 3 filing window.

5. We conclude that Governor's School has not demonstrated a sufficient basis for waiving the Commission's rules. Waiver is appropriate if special circumstances warrant a deviation from

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<sup>5</sup> 47 C.F.R. § 54.504(b)(3) and (4); § 54.511.

<sup>6</sup> 47 C.F.R. § 54.504(c).

<sup>7</sup> 47 C.F.R. § 54.507(c).

<sup>8</sup> 47 C.F.R. § 54.507(g).

<sup>9</sup> Waiver Request; SLD web site, What's New (December 6, 1999)  
<<http://www.sl.universalservice.org/whatsnew/121999.asp>>.

<sup>10</sup> 47 C.F.R. §§ 54.504(b)(3) and (4); § 54.511.

<sup>11</sup> FCC Form 470, Governor's School for Global Economics and Technology, filed December 27, 1999.

<sup>12</sup> *Id.*

<sup>13</sup> FCC Form 471, Governor's School for Global Economics and Technology, filed February 3, 2000; FCC Form 471, Governor's School for Global Economics and Technology, filed March 9, 2000.

the general rule, and such deviation would better serve the public interest than strict adherence to the general rule.<sup>14</sup> In requesting funds from the schools and libraries universal service support mechanism, the applicant bears the burden of getting its forms and other information to SLD for processing within the established deadline if the applicant wishes to be considered with other in-window applicants.

6. The particular facts of this case do not rise to the level of special circumstances required for a deviation from the general rule. It is incumbent upon applicants to anticipate unexpected yet reasonably foreseeable circumstances, such as postal delay.<sup>15</sup> In light of the thousands of applications that SLD reviews and processes each year, it is administratively necessary to place on the applicant the responsibility of complying with all relevant rules and procedures.<sup>16</sup> Thus, in order for the program to work efficiently, the applicant must assume responsibility for timely submission of its application materials if it wishes to be considered within the window. Here, Governor's School fails to present good cause as to why it could not timely file its application. We therefore find no basis for waiving the filing window deadline.

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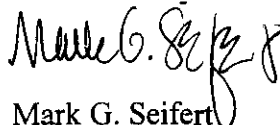
<sup>14</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

<sup>15</sup> See *FCC Overrules Caldwell Television*, 58 RR 2d 1706, 1707 (1985). In a recent order, the Commission granted a waiver of the FCC Form 471 filing window for certain applicants in the first three program funding years that mailed their applications at least three days before the filing deadline, or the day before via guaranteed overnight courier. See *Request for Review by Hardee County School Board et al., Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket Nos. 96-45 and 97-21, Order, DA 01-2978 (Com. Car. Bur. rel. December 21, 2001) (*Hardee County*). However, unlike applicants granted relief in that order, Governor's School experienced delay with respect to its FCC Form 470, and therefore does not merit similar relief from postal delays. The FCC Form 470 merely initiates the process of requesting bids, and unlike the FCC Form 471 application, is not subject to a specified filing period and firm deadline. Moreover, the Commission based its decision in *Hardee County* in large measure upon the fact that, beginning in Funding Year 4, FCC Forms 471 are deemed filed when postmarked. By contrast, FCC Forms 470 continue to be considered filed when received by SLD. Therefore, the special circumstances justifying the Commission's decision in *Hardee County* are not present in the case of the instant Waiver Request by Governor's School.

<sup>16</sup> See *Request for Review by Anderson School Staatsburg, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association*, File No. SLD-13364, CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd 25610 (Com. Car. Bur. 2000), at para. 8 ("In light of the thousands of applications that SLD reviews and processes each funding year, it is administratively necessary to place on the applicant the responsibility of understanding all relevant program rules and procedures.").

7. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, 1.3, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, and 54.722(a), that the Waiver Request filed by the Governor's School for Global Economics and Technology, Keysville, Virginia, on July 17, 2000 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in black ink, appearing to read "Mark G. Seifert", with a stylized flourish at the end.

Mark G. Seifert  
Deputy Chief, Accounting Policy Division  
Common Carrier Bureau